

Before the

RECEIVED

2. As argued below, there is absolutely no basis for the Motion. In fact, Jenks has engaged in the very form of conduct that he complains of with respect to Gradick. The Motion should be summarily denied.

3. Jenks has alleged that the Gradick Motion to Modify Issues, filed March 26, 1993, contained false and misleading statements unsupported by any documentation, that it withheld relevant information, and that it misrepresented the status of matters pending at the Commission. Jenks further alleges that "Gradick made statements either knowing them to be false or with the reckless disregard for truth in this proceeding." Notwithstanding the serious allegations, no affidavits from anyone with personal knowledge that Gradick made such statements either knowing them to be false or with reckless disregard for the truth, that Gradick misrepresented the status of matters pending before the Commission or that Gradick knew that the Mass Media Bureau had already reviewed the allegations contained in the Petition for Reconsideration and found them to be unsubstantiated were associated with the Motion.

4. Section 1.229(d) of the Commission's Rules requires that motions to enlarge issues "contain specific allegations of facts sufficient to support the action requested." Except where official notice may be taken, allegations are to be supported by affidavits of persons or persons having personal knowledge thereof. If for no other reason, the

Motion must be denied for failure to meet the requirements of §1.229(d). See also Prehearing Order, ¶3.

5. It appears that Jenks "doth protest too much." A careful reading of the Motion to Modify Issues makes it clear that it is based upon pending matters before the FCC. <sup>1/</sup> The requested relief is premised upon the fact that a Petition for Reconsideration in which allegations were made that Jenks and others acted improperly before the Commission in connection with the Bowdon rulemaking proceeding is still pending before the Commission. This fact has been recognized by Jenks. See Opposition P. 5. That fact has not changed even though the Commission has declined to institute an inquiry requested by Design Media, Inc. on September 26, 1991.

6. Gradick in his Motion made it clear that "these matters are pending and that there have been no determinations concerning the sufficiency of the allegations or the legal efficacy of the arguments for reconsidera-

---

<sup>1/</sup> Jenks is correct that the representation in the Motion that the request for inquiry, filed September 26, 1991, was still pending was erroneous. It had been acted upon when the Commission, by letter dated February 10, 1993, declined to institute an inquiry. That fact was promptly brought to the attention of the Presiding Judge and all parties before responsive pleadings were filed in connection with the Motion to Modify. See Supplement dated April 2, 1993. Counsel for Gradick regrets any inconvenience that this may have caused to the Presiding Judge or the other parties, but this hardly rises to a misrepresentation.

tion...." In other words, Gradick has not become an advocate with respect to the issues raised on reconsideration and clearly pointed out that the matters are pending yet to be resolved by the Commission. Therein lies the premise for the requested relief, i.e. that any grant to Jenks in this proceeding be conditioned upon the outcome with respect to the Petition for Reconsideration. That position is as valid today as it was on March 26, 1993 when the Motion to Modify Issues was filed. The fact that the Commission has declined to institute an inquiry does not dispose of the issues raised in the Petition for Reconsideration. <sup>2/</sup>

7. As indicated above, this is not the time or the place to litigate the allegations raised in the Petition for Reconsideration. The thrust of the Gradick Motion was to point out that the issues had been raised, that they were serious and that they have yet to be resolved. Gradick only requested that any grant to Jenks be conditioned upon the outcome in connection with the Petition for Reconsideration. If, as counsel for Jenks apparently earnestly believes, there is no basis for the Petition for

---

<sup>2/</sup> The Petition for Reconsideration filed by Alexander Mitchell Communications Corporation ("AMCC") was not mentioned in the Motion to Modify. As Jenks pointed out in his Motion to Enlarge, Footnote 2, "the AMCC Petition for Reconsideration did not raise any allegations against Terry C. Jenks, but rather was limited to technical and other allocation policies."

Reconsideration, the matter will be quickly rendered moot. However, in the event that the Commission should grant the Petition for Reconsideration and in that process makes findings adverse to Jenks' qualifications to be a Commission licensee, the public interest will be protected with minimal inconvenience to the parties in the Bowdon FM application proceeding by conditioning any grant to Jenks.


8. Thus, in summary, there is no basis for the claim that Gradick filed his Motion "not with any good faith belief in the merits thereof, but in an effort to require Jenks to spend time and resources defending himself and to raise suspicions about Jenks in this proceeding." Having complained about Gradick's improper motives, Jenks then gratuitously alleges that "It is possible that Gradick had even other improper motives as well." (Emphasis added.) All of this is based purely on speculation and surmise without any allegations supported by an affidavit of person or persons with knowledge thereof.

9. The fact that the Commission has elected not to institute an investigation under §403 of the Communications Act of 1934, as amended, is not necessarily dispositive with respect to the Petition for Reconsideration. See §1.106 of the Commission's Rules. Thus, until the Petition is disposed of, there are still unresolved issues pending before the Commission with respect to Mr. Jenks.

WHEREFORE the premises considered, it is submitted that there is no basis for the Motion to Enlarge Issues, factual or otherwise, and it should be summarily denied.

Respectfully submitted,

STEVEN L. GRADICK

By:   
David L. Hill  
Audrey P. Rasmussen  
His Attorneys

O'Connor & Hannan  
1919 Pennsylvania Avenue, N.W.  
Suite 800  
Washington, D.C. 20006  
(202) 887-1400

Dated: April 16, 1993

3728h

**CERTIFICATE OF SERVICE**

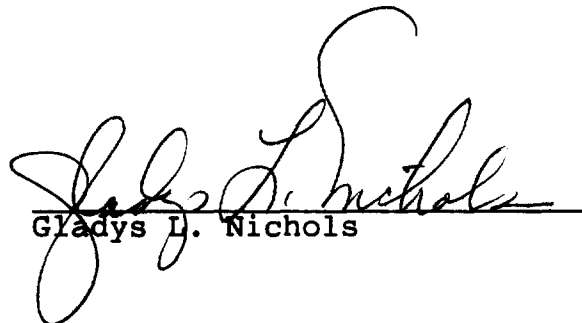
I, Gladys L. Nichols, do hereby certify that on this 16th day of April, 1993, the foregoing **OPPOSITION TO MOTION TO ENLARGE ISSUES** was served to the following persons by First Class Mail.

\* The Honorable Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 214  
Washington, D.C. 20554

James Shook  
Hearing Branch  
Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W., Suite 7212  
Washington, D.C. 20554

Chief, Data Management Staff  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N.W., Room 302  
Washington, D.C. 20554

Patricia A. Mahoney, Esq.  
Fletcher, Heald & Hildreth  
1300 North 17th Street  
11th Floor  
Rosslyn, VA 22209

  
Gladys L. Nichols

\* Hand Delivered